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April 15, 2021

**VIA ELECTRONIC FILING**

The Honorable Jocelyn Boyd  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

RE: Petition for Declaratory Order with Verification of Orangeburg  
County Solar Project, LLC and Orangeburg South Solar Project,  
LLC both Wholly Owned Subsidiaries of Savion, LLC  
Docket No. 2021-114-E

Dear Ms. Boyd:

Please find enclosed for filing on behalf of Dominion Energy South Carolina, Inc. in the above-referenced matter the Petition to Intervene and Responsive Comments to Petition for Declaratory Order.

By copy of this letter, we are providing a copy of the filing to the parties of record and enclose a certificate of service to that effect.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Matthew W. Gissendanner".

Matthew W. Gissendanner

MWG/kms

Enclosure

cc: G. Trenholm Walker, Esquire  
Thomas P. Gressette Jr., Esquire  
Jeffrey M. Nelson, Esquire  
(all via U.S. First Class Mail and electronic mail w/enclosures)

Petition for Declaratory Order with  
Verification of Orangeburg County Solar  
Project, LLC and Orangeburg South Solar  
Project, LLC both Wholly Owned  
Subsidiaries of Savion, LLC

# DOMINION ENERGY SOUTH CAROLINA, INC.'S PETITION TO INTERVENE AND RESPONSIVE COMMENTS TO PETITION FOR DECLARATORY ORDER

Pursuant to S.C. Code Ann. Regs. 103-825(A)(3) and other applicable rules and regulations of the Public Service Commission of South Carolina (the “Commission”), Dominion Energy South Carolina, Inc. (“DESC”) hereby petitions to intervene as a party of record in the above-referenced proceeding and provides responsive comments to the Petition for Declaratory Order filed in this docket on March 29, 2021 (the “Petition”).

**PETITION TO INTERVENE**

In support of its Petition to Intervene, DESC hereby shows the following:

1. DESC is a corporation duly organized and existing under the laws of the State of South Carolina, with its principal offices at 220 Operation Way, Cayce, South Carolina 29033.
2. DESC is engaged, in part, in the business of generating, transmitting, and delivering electricity and providing electric service to the public for compensation.

3. Corporate legal counsel for DESC in this proceeding are as follows:

K. Chad Burgess, Esquire  
 Matthew W. Gissendanner, Esquire  
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 220 Operations Way  
 Cayce, South Carolina 29033-3701  
 Phone (803) 217-8141 (Burgess)  
 Phone (803) 217-5359 (Gissendanner)  
 Email: chad.burgess@dominionenergy.com  
 Email: matthew.gissendanner@dominionenergy.com

All correspondence and any other matters relative to this proceeding should be addressed to these representatives.

4. Orangeburg County Solar Project, LLC and Orangeburg South Solar Project, LLC (collectively, the “Solar Developers”) filed the Petition with the Commission.

5. The Solar Developers are wholly owned subsidiaries of Savion, LLC.

6. The Petition is related to projects being developed by each Solar Developer (each a “Project” and collectively, the “Projects”).

7. The Petition asserts that the Projects are presently planned to be interconnected to the Santee Cooper electric system.

8. With respect to the Projects, the Petition requests that the Commission issue an order confirming:

- The Projects do not meet the definition of a major utility facility, as defined in S.C. Code Ann. § 58-33-20(2)(a) because each Project will operate at a capacity less than 75 MW;
- The Projects do not meet the definition of a “major utility facility,” as defined in S.C. Code § 58-33-20(2)(b), merely because they will share a single 200-foot 230 kV generation tie (gen-tie) line; and
- Because the Projects do not meet the definition of a “major utility facility,” as defined in S.C. Code § 58-33-20, the Solar Developers are not required

to obtain a Certificate of Environmental Compatibility pursuant to S.C. Code § 58-33-10, et seq.

9. Although the Projects are presently planned to interconnect to the Santee Cooper electric system, Orangeburg County Solar Project, LLC is currently seeking interconnection service from DESC for another project and is currently in the DESC interconnection queue for that project.

10. Based on available information and belief, DESC avers that the project seeking interconnection from DESC is roughly on or about the same footprint as the Project that Orangeburg County Solar Project, LLC is developing for a planned interconnection with Santee Cooper (the “Orangeburg County Solar Project”), but Savion, LLC has informed DESC that it currently has two projects in the footprint—the project in the DESC interconnection queue and the Project presently planned to be interconnected with the Santee Cooper system.

11. DESC is subject to the South Carolina Facility Siting and Environmental Protection Act, codified at S.C. Code § 58-33-10, et. seq (“the Siting Act”), which is the topic of the Petition.

12. DESC has a general interest in the Commission’s interpretation of the Siting Act and its applicability.

13. DESC’s interest cannot be adequately represented by any other party to this proceeding.

14. DESC has a direct and real interest in the Commission’s consideration of the Petition.

15. DESC’s intervention is timely.<sup>1</sup>

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<sup>1</sup> The above-captioned docket was established when the Solar Developers filed the Petition on March 29, 2021, and no timeline for intervention has been established.

16. Furthermore, DESC's responsive comments to the Petition and its intervention in this proceeding will provide the Commission and its staff relevant information to form a complete record upon which the Commission will make its decision.

### **RESPONSIVE COMMENTS TO THE PETITION**

DESC provides the following comments in response to the Petition and, for the reasons set forth below, respectfully requests that the Commission narrowly tailor its order on the Petition.

#### *A. Gen-Tie*

Solar Developers explain that the Orangeburg County Solar Project is proceeding to construction first and that it will include a "'Project' Substation."<sup>2</sup> Once the Project Substation is constructed, the Project being developed by Orangeburg South Solar Project, LLC (the "Orangeburg South Solar Project") will electrically connect to the Project Substation through a medium voltage (34.5 kilovolt [kV]) collection system.<sup>3</sup>

Solar Developers note that a single 230 kV generation tie (the "Gen-Tie") line will connection the Project Substation to the point of interconnection. Solar Developers describe the Gen-Tie as being approximately 200 feet in length, located entirely within the Orangeburg County Solar Project site, and maintained by Orangeburg County Solar Project, LLC.<sup>4</sup> As a result, Solar Developers argue that the Gen-Tie fails to trigger the Siting Act because the "inclusion of the Gen-Tie line does not convert either [P]roject into a 'major utility facility.'"<sup>5</sup>

It is clear that the Gen-Tie's impact on the Siting Act is the primary concern of the Petition—particularly given the Petition's survey of other states' treatment of the same. DESC

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<sup>2</sup> Petition at 4.

<sup>3</sup> *See id.*

<sup>4</sup> *See id.*

<sup>5</sup> *Id.* at 4. The Petition's argument seems to suggest that the length of the Gen-Tie line is the primary reason that the Siting Act is not triggered.

takes no position on whether the inclusion of the Gen-Tie line subjects the Projects to the Siting Act, so long as any such determination rests upon narrow issues of law and fact related to the South Carolina-specific Siting Act as discussed herein.

*B. Capacity*

Solar Developers also state the Projects' generating facilities will each "consist of a single electric generation facility designed to operate at a limited capacity, producing less than seventy-five megawatts (<75 MWs)."<sup>6</sup> As a result, the Solar Developers claim that this limited capacity does not meet the "'major utility facility' definition of S.C. Code § 58-33-[2]0(2)(a), which has a threshold of 75 MWs for electric generating plants."<sup>7</sup> However, the Petition is unclear as to how such capacity is "limited" and does not provide sufficient information as to whether this capacity reflects the facility rating or the "send out" capacity, i.e., the maximum injection at the point of interconnection, of the generating facilities. Although the Petition primarily seeks a determination of the Gen-Tie's impact on the Siting Act, the Petition also requests a declaration that "[t]he Projects do not meet the definition of a major utility facility, as defined in S.C. Code Ann. § 58-33-20[2](a), because each Project will operate at a capacity less than 75 MW"<sup>8</sup>—an issue on which the Solar Developers simply have not provided enough information.

To be clear, impacts to the environment as a result of constructing such generating plants is one of the primary concerns of the Siting Act and any such capacity determination should be guided by the same. For example, a larger facility rating typically indicates a larger construction footprint. On the other hand, the "send out" capacity can be artificially limited in a variety of ways that are completely decoupled from the size of the generating facility's construction footprint. For

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5.

example, a developer could construct a 500 MW generator, but limit its output at the point of interconnection to 74 MW. If the Siting Act applied only to output at the interconnection, this 500 MW generator would not trigger the Siting Act, but a 75.1 MW generator would if it produced the same 75.1 MW to the point of interconnection—a non-sensical result.

As discussed above, DESC interprets the Petition as primarily seeking a determination of the Gen-Tie's impact on the Siting Act. The Petition does not state whether each Project's 75 MW threshold is based on the facility rating or the "send out" capacity, and it does not specifically request an order declaring that the "send out" capacity alone triggers the 75 MW threshold. To the extent Solar Developers seek an additional declaration (separate and apart from the determination sought regarding the Gen-Tie's impact on the Siting Act) that neither Project meets the Siting Act's 75 MW threshold without providing any details as to how the generating capacities of each Project were determined, DESC would strongly oppose such an order. Such an order is not required to provide the Commission's holding regarding the effect of the Gen-Tie. If Solar Developers seek clarification on whether the Commission's basis for the 75 MW threshold in the Siting Act is measured upon the facility rating or the maximum injection at the point of interconnection, Solar Developers should amend the Petition to specifically state such request and describe the Projects' output in greater detail.

*C. PURPA "One-Mile Rule"*

Finally, the Petition casually mentions that the Projects are "separated by approximately one mile"—a consideration under PURPA's maximum capacity calculation but not relevant to the Siting Act's 75 MW threshold. Under PURPA, to obtain qualifying facility ("QF") status and trigger the utility's mandatory purchase obligation, "the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production qualifying facilities that use the same energy resource, are owned by the same person(s)

or its affiliates, and are located at the same site, may not exceed 80 megawatts.” 18 C.F.R. 292.204(a)(1) (emphasis added). For purposes of determining whether facilities are located at the same site, PURPA provides that “there is an irrebuttable presumption that affiliated small power production qualifying facilities that use the same energy resource and are located one mile or less from the facility for which qualification or recertification is sought are located at the same site as the facility for which qualification or recertification is sought.” 18 C.F.R. 292.204(a)(2)(i)(A) (emphasis added). In other words, if a 75 MW facility is located one mile or less from another 75 MW facility—both under common ownership—the analysis under PURPA would consider these facilities to be located at the same site, and neither facility would be able to obtain QF status and trigger PURPA’s mandatory purchase obligation. PURPA further provides that, where the affiliated small power production qualifying facilities that use the same energy resource and are located “more than one mile and less than 10 miles” from the facility for which qualification or recertification is sought, there is a “rebuttable presumption” that the facilities are located at separate sites from the facility for which qualification or recertification is sought. 18 C.F.R. 292.204(a)(2)(i)(C). In other words, under PURPA, for facilities that are “separated by approximately one mile,” there is either an irrebuttable presumption that the facilities are located at the same site or a presumption—subject to rebuttal by the utility—that the facilities are located at separate sites.

Again, Solar Developers have not provided sufficient details on this point and, regardless, there need not be a finding on this alleged fact to answer the question presented regarding the Gen-Tie given that the Siting Act is not concerned with the distance of Projects from one another. Therefore, DESC objects to the Commission “declaring” that the Projects are separate projects for purposes of PURPA or are otherwise PURPA compliant. For the reasons stated above, DESC



strongly objects to any interpretation of the Siting Act in this docket that goes beyond answering the specific question raised by the Solar Developers regarding the impact of the Gen-Tie.

### **CONCLUSION**

DESC does not oppose the Petition's request for a determination of the Gen-Tie's impact on the Siting Act and takes no position on the same. DESC, however, respectfully requests the Commission clearly indicate the scope of its order and tailor it in scope to address only that issue. If the Commission does see fit to rule on the basis of the 75 MW capacity limitation in the Siting Act (or that neither project meets the Siting Act's 75 MW threshold), DESC respectfully requests that the Commission require more details on the Projects' capacity limitations and provide sufficient notice before issuing such ruling so interested parties are afforded the opportunity to provide comments. Further, to the extent the Commission sees fit to hold that these facilities are separate facilities for purposes of the Siting Act, DESC respectfully requests that the Commission clearly articulate that this holding is not binding on any future PURPA analysis. DESC believes the express acknowledgement of a limited scope in the order is important because DESC's experience has shown that solar developers in South Carolina typically seek first to achieve commercial terms and conditions and then find any interpretation of regulatory rules and requirements that allow those commercial terms and conditions to continue—regardless of the appropriateness of such interpretation.

Finally, DESC has an interest in ensuring that any such order issued by the Commission is clear in terms of its applicability, scope, and precedential value, if any. As such, DESC respectfully requests that the Commission order that any declaratory relief beyond the treatment of the Gen-Tie would not be binding on or in any way precedential in terms of any future project Solar Developers may seek with DESC. Therefore, DESC respectfully requests that the Commission address the

narrow issues presented in the Petition in accordance herewith and grant DESC's Petition to Intervene.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,



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*Attorneys for Dominion Energy South Carolina,  
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Cayce, South Carolina  
April 15, 2021

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2021-114-E**

**IN RE:**

Petition for Declaratory Order with )  
Verification of Orangeburg County Solar )  
Project, LLC and Orangeburg South Solar )  
Project, LLC both Wholly Owned )  
Subsidiaries of Savion, LLC )  
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**CERTIFICATE OF  
SERVICE**

This is to certify that I have caused to be served this day copies of  
**Dominion Energy South Carolina, Inc.'s Petition to Intervene and  
Responsive Comments to Petition for Declaratory Order** on the persons  
named below at the address set forth via U.S. First Class Mail and electronic  
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Matthew W. Gissendanner

Cayce, South Carolina

This 15th day of April, 2021